IN THE HIGH COURT OF JUDICATURE AT PATNA

CR. WJC No.897 of 2008

Amit Kumar Singh, S/o Late Fauzdari Mandal, Village – Nayachhabni, P.S. Bariyarpur, District – Munger …… Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar
2. The Director General of Police, Government of Bihar
3. The Registrar, Co-operative Society, Bihar, Patna
4. The Commissioner-cum-Secretary, Co-operative Society Department, Bihar, Patna
5. The District Co-operative Officer, Munger,
6. The Superintendent of Police, Munger, Bihar
7. The Dy. S.P. Jamalpur, Munger, Bihar
8. The Present Officer in Charge, Bariyarpur, Police station –cum-Investigating officer namely Munilal.
9. The Former Investigating officer of the Case namely Sri Suresh Prasad, Bariyarpur Police Station, Munger
10. Sri Shalendra Kumar Jaishwal Chairman, Primary Agricultural Credit Society, Village + P.O. Bariyarpur Bus Stand, District – Munger

…… Respondents.

For the Petitioner Appellant : Mr. Sabbir Ahmad, Advocate
Mr. Shambhu SN Singh, Advocate

For the State : Mr. Ritesh Kumar, J.C. to AAG I

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P R E S E N T

Hon'ble the Chief Justice
&
Hon'ble Mr. Justice Kishore K. Mandal

Dated, the 24th October, 2008.

We heard the counsel for the petitioner.

2. Against the petitioner, the Chief Judicial Magistrate, Munger has taken cognizance of the offences punishable under sections

406, 409 and 420 of the Indian Penal Code. The trial is presently pending before the Sub Divisional Judicial Magistrate, Munger. The counsel for the petitioner raised twofold submission, namely, (i) that without previous sanction of the Registrar, no cognizance of the First Information Report filed by Shailendra Kumar Jaiswal could have been taken of and, (ii) that under section 5 of the Indian Penal Code, a person cannot be detained under Indian Penal Code where offence committed is under local law. According to the counsel, at best, the alleged offence is under local Act i.e. Bihar Co-operative Societies Act, 1955 (for short, 'the Act of 1955') and, therefore, proceedings against him under Indian Penal Code are bad in law.

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3. None of the contentions has any substance. As noticed above, the petitioner is being prosecuted for the offences punishable under sections 406, 409 and 420 of the Indian Penal Code. What is provided in section 47 of the Act of 1955 is that no prosecution for an offence under the Act of 1955 shall be instituted without previous sanction of the Registrar. The offence for which the petitioner is being prosecuted are not under the Act of 1955 but under the Indian Penal Code and there is no provision contained in section 47 of the Act of 1955 or any other provision in that Act that for the prosecution under Indian Penal Code, previous sanction of the Registrar is required. For the self-same reasons, section 5 of the Indian Penal Code is not attracted at all as the petitioner is being prosecuted not under the local law but for the offences punishable under the Indian Penal Code.

4. Writ petition is wholly misconceived, frivolous and devoid of any substance.

5. Writ petition is dismissed in limine.

R.M. Lodha, CJ

Kishore K. Mandal, J.

Anil/

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